

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS

DONALD BRADFISCH, individually and on )  
behalf of all others similarly situated, )

Plaintiff, )

vs. )

TEMPLETON FUNDS, INC. AND )  
TEMPLETON GLOBAL ADVISORS )  
LIMITED, )

Defendants. )

Case No.: 05-CV-298 MJR  
(7<sup>th</sup> Cir. Case # 05-3390)

**MEMORANDUM RE: EFFECT OF NOVEMBER 2006 MANDATE**

This Court, in its Memorandum and Order dated November 21, 2006, correctly hypothesized that there was a clerical error in the caption of the Mandate issued by the Court of Appeals on November 14, 2006 in In re Mutual Fund Market-Timing Litigation.

On October 16, 2006, the Court of Appeals issued an Opinion and a Judgment in In re Mutual Fund Market-Timing Litigation. That Opinion and that Judgment erroneously included this case, i.e., Bradfish v. Templeton Funds, Inc., which had, several months prior thereto, been dismissed by the Court of Appeals with finality, per Mandate of June 23, 2006.

On October 19, 2006, Defendants herein, having spotted the error in both the Opinion and the Judgment of the Court of Appeals issued on October 16, 2006 in In re Mutual Fund Market-Timing Litigation, immediately filed a Motion to Correct Clerical Errors in Opinion and Judgment in the Court of Appeals (a copy of which is attached hereto as Exhibit A).

On October 23, 2006, the Court of Appeals acknowledged its error by issuing an Order correcting the Opinion and a Corrected Judgment (a copy of which is attached hereto as Exhibit B), excising this case (and the three other Franklin Templeton cases dismissed by Chief Judge Murphy) from the Opinion and the Judgment in In re Mutual Fund Market-Timing Litigation.

On November 14, 2006, the Mandate issued, containing the aforementioned Order correcting the Opinion and the Corrected Judgment of the Court of Appeals. For whatever reason, the caption of the Mandate incorrectly included this case and the three other Franklin Templeton cases. This is an obvious immaterial clerical error and is of no force and effect since the Order correcting the Opinion and the Corrected Judgment make clear that this case was not part of that Mandate.

Indeed, lest there be the slightest doubt, on November 13, 2006, Plaintiff Bradfisch filed a Motion to Recall Mandate (i.e., the Mandate of June 23, 2006), which had dismissed this case. That motion was denied by the Court of Appeals on November 16, 2006 (a copy of which is attached hereto as Exhibit C). Plaintiff Bradfisch, evidently recognizing that he had run out of options in the Court of Appeals, also filed a Petition for *Certiorari* to the Supreme Court of the United States on November 13, 2006 (see cover of Petition, a copy of which is attached hereto as Exhibit D).

Accordingly, the problem posed by this Court has been cleared up: this case (and the three other Franklin Templeton cases) were dismissed by the Court of Appeals, with finality, per the Mandate of June 23, 2006. The Mandate of November 14, 2006 in In re Mutual Fund Market-Timing Litigation has nothing to do with this case, as the Court of Appeals, itself, recognized when it issued the Order correcting the Opinion and the Corrected Judgment of October 23, 2006. No further action need be taken by this Court.

Dated: November 22, 2006

Respectfully submitted,

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TEMPLETON FUNDS, INC. AND  
TEMPLETON GLOBAL ADVISORS, LTD.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 22<sup>nd</sup> day of November, 2006, a true and correct copy of the foregoing document was electronically filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to the attorneys listed below:

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**ATTORNEYS FOR PLAINTIFFS**

The undersigned hereby certifies that on this 22<sup>nd</sup> day of November, 2006, a true and correct copy of the foregoing document was served by first-class mail, postage prepaid, upon the following non-registered participant:

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s/ Lisa M. Wood \_\_\_\_\_